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FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

OFFICE OF GENERAL

October 16, 2017

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

MUR # 7288

Re: Complaint Against Democratic National Committee & Tom Perez

Dear Counsel,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good. We submit this complaint to request the Federal Election Commission (Commission) investigate and take appropriate enforcement action to address apparent violations of the Federal Election Campaign Act (Act) and Commission regulations by the Democratic National Committee (DNC) and its Chairman, Tom Perez.

According to media reports and public filings, after winning the race to become DNC Chairman, Perez transferred funds from his campaign committee to his former opponents who had dropped out of the race and supported his candidacy. Federal law prohibits this type of donation or transfer from the DNC or the DNC's agent acting on its behalf. There is no doubt that at the time Chairman Perez donated or transferred the funds, he was an agent of the DNC, the funds were related to the DNC, and the DNC's response to the donation demonstrates Perez was acting on the DNC's behalf. Allowing this behavior to go unpunished opens the door for a new level of corruption in party elections—offering campaign cash for support from former opponents. The Commission must immediately investigate and enforce the law.

Complaint

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against the Democratic National Committee, 430 South Capitol Street, SE, Washington, DC 20003, and Chairman Tom Perez, 430 South Capitol Street, SE, Washington, DC 20003.

2. This complaint is based on information and belief that the DNC and Chairman Perez directed non-federal funds to his former opponents and violated 52 U.S.C. § 30125(a) and 11 C.F.R. § 300.10(a).

3. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [Act] . . . [t]he Commission shall make an investigation of such alleged violation." 52 U.S.C. § 30109(a)(2); *see also* 11 C.F.R. § 111.4(a).

Facts

4. In 2016, Perez established Team Tom, an organization under 26 U.S.C. § 527 in order to raise money and make expenditures related to his campaign for chairmanship.

5. Leading up to and during the election of DNC Chair, Jamie Harrison, Jehmu Green, and Sally Boynton Brown dropped out of the race and endorsed Perez.¹ On February 25, 2017, Perez was elected Chairman by a 35-vote margin.² At that time, Perez became an agent of the DNC. The DNC and its agents are subject to the Federal Election Campaign Act. 11 C.F.R. § 300.10.

6. The month after his election, Perez began donating/transferring³ funds from the non-profit political committee he established, maintained, and controlled to his former opponents who had dropped out of the race and endorsed Perez's candidacy: on March 28, 2017, Perez transferred \$22,271 to Jamie Harrison (Harrison for DNC Chair); on

¹ Maggie Severns, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, Politico, July 12, 2017, available at <<http://www.politico.com/story/2017/07/12/tom-perez-paid-debt-jaimie-harrison-240444>> (attached as Exhibit A).

² *Id.*

³ Team Tom, Form 8872, Internal Revenue Service, Department of The Treasury, Filed July 31, 2017 (describing as "donation/transfer").

April 6, 2017, Perez transferred \$5,000 to Jehmu Green (Jehmu for DNC); and according to the DNC, Perez transferred an unspecified amount to Sally Boynton Brown.⁴

Law

7. Federal law distinguishes between two types of funds: (1) “federal funds” that are subject to the regulations and requirements of the Act and (2) “non-federal funds” that are not subject to the regulations and requirement of the Act. *See* 11 C.F.R. 300.2(k).⁵ Funds raised and spent by the DNC are federal funds. Funds raised and spent by Team Tom are non-federal funds. 11 CFR § 300.2(k).

8. National party committees and its agents are only allowed to make disbursement from a federal funds account. 11 CFR § 106.7. In order to avoid corruption and circumventing the law, national party committees and their agents are prohibited from using non-federal funds.⁶ Federal law states that national party committees “may not solicit, receive, or direct to another person a contribution, donation or transfer of funds or any other thing of value, or spend any” non-federal funds. 52 U.S.C. § 30125(a)(1); 11 CFR 300.10(a)(1), (2). The prohibition applies to “any officer or agent acting on behalf of such a national committee.” 52 U.S.C. § 30125(a)(2); 11 CFR 300.10(c)(1). Specifically, an officer or agent “acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to . . . an organization described in section 527 of such Code.” 52 U.S.C. § 30125(d)(2).

9. In the case of national party committees, “agent” is defined to include “any person who has actual authority, either express or implied, to . . . solicit, direct, or receive any contribution, donation, or transfer of funds.” 11 C.F.R. § 300.2(b)(1)(i).

10. “Donation” is defined by the Commission as “a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person but does not include contributions.” 11 C.F.R. § 300.2(e).

⁴ *Id.*; Maggie Severns, *DNC’s Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, Politico, July 12, 2017.

⁵ “Non-Federal funds” are defined by the Commission as “funds that are not subject to the limitations and prohibitions of the Act.” 11 C.F.R. 300.2(k).

⁶ *McConnell v. FEC*, 540 U.S. 93 (2003).

11. "To direct" is defined by the Commission as "to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a ... organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary." 11 C.F.R. § 300.2(n).

Cause of Action

Tom Perez, On Behalf of The Democratic National Committee, Directed Non-Federal Funds in Violation of The Federal Election Campaign Act

12. Federal law and Commission regulations prohibit a national party committee and its agents from spending, donating, directing, or transferring non-federal funds. 52 U.S.C. § 30125(a)(2); 11 C.F.R. 300.10(a)(2). The DNC is a national party committee and therefore, the DNC and its agents cannot donate or transfer non-federal funds. Team Tom's funds are non-federal funds. 11 C.F.R. 300.2(k).

13. After being elected Chairman and becoming an agent of the DNC, Perez violated the ban on national committees spending non-federal funds when he spent non-federal Team Tom funds to help cover the debt of three of his former opponents.⁷

14. DNC Communications Director Xochitl Hinojosa publicly stated, "Tom had leftover funds after the DNC race and was happy to help other candidates who asked for help with their campaign debt."⁸ Having the DNC communications director comment on behalf of Perez as to the purpose of the funds, further demonstrates that Perez was acting on behalf of the DNC. In Advisory Opinion 2005-02, the Commission said that whether someone is working as an agent is "a fact-based determination that will be based on what the [principal] and that [agent] say and do."⁹

15. According to Perez's opponent Jaime Harrison, "Tom's staff—which is very gracious of them—asked if they could be helpful," and then Harrison accepted \$22,270

⁷ Team Tom, Form 8872, Internal Revenue Service, Department of The Treasury, Filed July 31, 2017; Maggie Severns, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, Politico, July 12, 2017.

⁸ Maggie Severns, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, Politico, July 12, 2017.

⁹ Federal Election Commission, Advisory Opinion 2005-02, April 22, 2005.

from Perez to pay off his debt.¹⁰ Perez also gave \$5,000 to Jehmu Green and the DNC explained he assisted with Sally Boynton Brown's debt.¹¹ Further, according to *Politico*, a Perez aide said that Harrison, Green, and Boynton Brown asked for help with their debt.¹² When Harrison refers to "Tom's staff," it is clear Perez was not donating in his individual capacity and likely he is referring to DNC staff members who were directed by Perez to see how they could help his former opponents.

16. The Supreme Court has explained the importance of the Act's applicability to national party committees and party officers—it is necessary to prevent corruption and the circumvention of the Act. *McConnell v. FEC*, 540 U.S. 93 (2003). The Court acknowledged the Act does not apply to party officers acting "in their individual capacities." *Id.* Perez did not act in his individual capacity and give personal funds.¹³ Rather, the money Perez gave to Harrison, Green, and Boynton Brown was raised for purposes of being elected chairman of the DNC and subsequently donated while he served as DNC chairman. Moreover, the donations public explanation was facilitated by DNC staff. The money was inextricably linked to Perez's DNC chairmanship and therefore could not have been donated in his individual capacity.

17. In Advisory Opinion 2004-25 (Corzine), the Commission explained a national party committee is restricted from raising any non-federal funds, including raising or spending funds for 527 organizations.¹⁴ These restrictions "extend to officers and agents of a national party committee" acting on behalf of the national party committee. The Commission explained when officers and agents of a national party committee are not acting on behalf of a national party committee—when they donate personal funds "without express or implied authority from, or on behalf of, the [committee]."¹⁵ Unlike

¹⁰ Maggie Severns, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, *Politico*, July 12, 2017.

¹¹ *Id.*

¹² *Id.*

¹³ FEC, Advisory Opinion 2004-25, Aug. 20, 2004, at 3-4 (discussing the distinction between personal funds and funds contributed or donated by others, or who raise funds for other persons or organizations to spend).

¹⁴ FEC, Advisory Opinion 2004-25, Aug. 20, 2004, at 2.

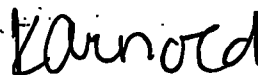
¹⁵ *Id.*; *see also id.* at 3-4 (discussing the distinction between personal funds and funds contributed or donated by others, or who raise funds for other persons or organizations to spend).

the advisory opinion, Perez did not spend personal funds with no tie to the DNC.¹⁶ Rather, he spent funds from a 527 he controlled and that were raised to elect him as chairman of the DNC.¹⁷ In addition to the donated funds being directly tied and related to the DNC, those who received the donations had debt related to a DNC campaign. Finally, Perez only donated the funds after being elected Chairman and becoming an officer and agent of the DNC.¹⁸ His official position led to the donations—had Perez not won the election, he likely would not have donated to his opponents. These facts demonstrate the payments were made with express or implied authority on behalf of the DNC.

Prayer for Relief

18. Wherefore, the Commission should find reason to believe that the DNC and Tom Perez violated 52 U.S.C. § 30125(a) and 11 C.F.R. 300.10(a), and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the Act. FACT respectfully requests the Commission immediately investigate and hold the Respondents accountable.

Respectfully submitted,



Kendra Arnold, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

Subscribed and sworn to before me on October 16, 2017.

 Notary Public

¹⁶ *Id.* at 1-3.

¹⁷ Team Tom, Form 8872, Internal Revenue Service, Department of The Treasury, Filed July 31, 2017; Maggie Severns, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, Politico, July 12, 2017.

¹⁸ *Id.*

POLITICO



Harrison said in an interview that he and Perez did not discuss the transfer at the time of the endorsement, and Perez also transferred funds to two other failed candidates for DNC chairman. | AP Photo

DNC's Perez covered debt of rival-turned-supporter after chairmanship race

The report showing Perez's contribution is the first glimpse into his campaign finances as he closed in on the DNC chairmanship this winter.

By **MAGGIE SEVERNS** | 07/12/2017 09:06 AM EDT

Democratic National Committee Chairman Tom Perez transferred \$22,270 to key backer Jaime Harrison in March, a month after Harrison dropped out of the race for DNC chair and threw his support to Perez two days ahead of the vote.

The contribution from Perez's campaign committee, which was disclosed in an IRS filing by Harrison's campaign, wiped out the debt Harrison had accrued in the race to lead the DNC. He was said to have had the third-highest number of supporters when he dropped out of the race and endorsed Perez, who went on to win the chairmanship by a 35-vote margin out of 435.

Harrison, who was chairman of the South Carolina Democratic Party at the time, said in an interview that he and Perez did not discuss the transfer at the time of the endorsement, and Perez also transferred funds to two other failed candidates for DNC chairman. The report showing Perez's contribution to Harrison — more than one-fifth of the money Harrison raised — is the first glimpse into the campaign finances behind Perez's bid as he closed in on the chairmanship this winter. Perez's committee last filed a financial disclosure in January; another is due at the end of this month.

"Tom's staff — which is very gracious of them — asked if they could be helpful" with debt weeks after the race was over, Harrison said, and he accepted. Harrison said he made his decision to endorse Perez based on conversations with Perez and Rep. Keith Ellison, Perez's main rival, about their vision for the party in the weeks before he dropped out. Harrison said he never discussed campaign expenses with Perez at the time.

Perez also gave \$5,000 to political commentator Jehmu Greene, who endorsed him after she dropped out of the race, Greene said — although that only covered a part of her campaign debt. DNC Communications Director Xochitl Hinojosa said that Perez also assisted Sally Boynton Brown, now a top staffer for the Florida Democratic Party who did not respond to a request for comment.

"Tom had left over funds after the DNC race and was happy to help the other candidates who asked for help with their campaign debt," Hinojosa said.

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Raymond Buckley, the New Hampshire Democratic Party chairman who endorsed Ellison after ending his own DNC campaign, wrote in an email that he was not offered help retiring his debt after the race was over. Buckley, who exited the campaign a week before the vote, did not specify how much campaign debt he had left over.

ADVERTISING

"It took a lot of work, but I believe we paid all the bills," Buckley wrote.

A Perez aide said Harrison, Greene and Boynton Brown were the only three candidates who asked for help with their debt.

Greene, who received \$5,000 in funds from Perez's campaign after the DNC chair race was over, said in an interview that her debt from the race "far exceeds" the amount she received. Greene said that she received the funds after talking to a contact who worked on Perez's team and telling him about her debt. (The DNC did not clarify why Perez's campaign retired Harrison's full debt but not Greene's.)

"[Perez's staff] made a very gracious offer to be helpful, and I think that's a sign of his character and his commitment. I think he really did bring in voices to help move the party forward," Greene said.

Indeed, the insular four-month campaign for votes from a few hundred committee members grew expensive for many candidates, who hired staff, ran digital advertisements and traveled the country to seek support in-person — both from committee members and from rank-and-file Democrats invested in the outcome.

Perez's campaign told POLITICO at the end of January he'd raised \$825,000. Harrison reported spending just over \$100,000 on his campaign and raising slightly less than \$80,000 before Perez's donation.

The heated race to head the DNC took on additional significance as a proxy battle involving Sen. Bernie Sanders, who endorsed Ellison (and who was endorsed by Ellison during the 2016 Democratic presidential primaries). Ellison is now the deputy chair of the DNC, while Harrison is the associate chair and senior counselor to the committee.

The contribution from Perez to Harrison, dated March 27, was one of only two donations Harrison took in after the DNC election, which was held on Feb. 25 in Atlanta. The other donation was for \$50.

Ellison and South Bend Mayor Pete Buttigieg, who dropped out of the race shortly before the voting began, did not have debt after the campaign and did not receive any transfers from Perez, spokespeople said.